IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7237 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMED MEHMOOD RUNGREJ

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7237 of 2002

MR HASHIM QURESHI for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/10/2002

ORAL JUDGEMENT

Leave to amend the name of the petitioner detenu is granted.

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 5/5/2002 passed by the Police Commissioner, Ahmedabad City, and he has been declared as dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner - detenu, the detaining authority has passed the impugned order of detention relying upon two offences registered against the petitioner before the Madhavpura Police Station under Indian Penal Code, BP Act, Arms Act and Explosive Act and statements of witnesses. The learned counsel for the petitioner has submitted that even if the offences registered against the petitioner is taken as it is for the sake of arguments, then also there is question of law and order and not question of public order. He has further submitted that the representation made by the petitioner has not been considered by the concerned authority in its true spirit and mechanically rejected. Even no affidavit has been filed by the State authority justifying the grounds of detention. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases

> wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no affidavit has been filed either by the detaining authority or by the authority for justifying the grounds of detention, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 5/5/2002 passed against the petitioner-detenu is hereby quashed and set aside. The detenu namely Ahmed Mohammadbhai Rangrej is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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